IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 24787 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

BHASKER VISHNUPRASAD NEVE - Petitioner(s)
Versus
NEW MAHAVIRNAGAR CO-OPERATIVE HOUSING SOCIETY LTD - Respondent(s)

==========

Appearance :

MR DHARMESH V SHAH for Petitioner(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1,
MR JF MEHTA for Respondent(s) : 1,

==========

CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 13/04/2006

ORAL JUDGMENT

1. Rule. Shri J.F.Mehta, learned advocate waives service of rule on behalf of the respondent. With the consent of the learned advocates for the

parties, the matter is taken up for final hearing today.

2. By way of this petition under Article-226 of the Constitution of India, the petitioner has challenged the legality and validity of the order passed by the Gujarat State Co-operative Tribunal dated 6th December, 2005 passed in Misc. Application No.245 of 2005 in not condoning the delay in preferring the appeal against the judgment and award passed by the learned Board of Nominee. A further prayer is made to quash and set aside the order dated 15.3.2005 passed by the learned Joint Civil Judge, Gandhinagar in Regular Execution Application No.11 of 2003.

3. Basically, the petitioner has challenged the legality and validity of the order passed by the Tribunal in not condoning the delay. Shri Dharmesh Shah, learned advocate appearing on behalf of the petitioner has submitted that

considering the fact that the petitioner is aged about 77 years and he is maintaining his family and family members on family pension amount and in the facts and circumstances of the case, for the cause shown and mentioned in the application, the Tribunal ought to have condoned the delay, more particularly, when the petitioner has got meritorious case.

4. Shri Mehta, learned advocate appearing on behalf of the respondent has submitted that there is delay of more than three years and Rs.24,000/- is due and payable by the petitioner. It is also submitted that considering the long delay, the Tribunal was justified in not condoning the delay and therefore, it is requested to dismiss the present special civil application.

5. Heard the learned advocates appearing on behalf of the parties.

6. It is true that there is delay of three years. It is however the contention on behalf of the petitioner that he has got meritorious case, more particularly, the petitioner is aged 77 years and that he is maintaining his family members on pension amount and considering the judgment of the Hon'ble Supreme Court in case of COLLECTOR, LAND ACQUISITION, ANANTNAG AND ANOTHER V. MST. KATIJI AND OTHERS, AIR 1987 SC 1353, the delay caused in preferring the appeal may be condoned on certain conditions as such imposing some cost and directing the petitioner to pay some part payment towards decreetal amount. On going through the impugned orders, it appears that the learned Tribunal has not considered the aforesaid aspect. Normally, the litigant should not be non suited on technical ground but a fare opportunity is to be given to the party to put forward his case on merits.

7. Considering the aforesaid facts and

circumstances of the case and for the reasons stated above, the petition succeeds in part. The impugned order passed by the Gujarat State Co-operative Tribunal dated 6th December, 2006 passed in Misc. Application No.245 of 2005 in not condoning the delay caused in preferring the appeal is hereby quashed and set aside on condition that the petitioner shall deposit Rs.10,000/- (Rupees Ten Thousand only) towards the decreetal amount and a further sum of Rs.1000/- (Rupees One Thousand only) for the cost for appearance of the respondent in the present litigation in the matter of condonation of delay, to be paid to be respondent society on or before 1st May, 2006. On payment of aforesaid amount and on production of receipt before the Gujarat State Co-operative Tribunal, the Tribunal is directed to decide and dispose of the appeal preferred by the petitioner in accordance with law and on merits as early as possible.

8. Rule is made absolute to the aforesaid extent, however, with cost quantified as above.

9. At this stage, Shri Mehta, learned advocate appearing on behalf of the respondent society has submitted that in the event of deposit of the aforesaid amount, the respondent society will not press the Execution Darkhast Application till appeal is finally decided and disposed of.

10. The parties to act in terms of the aforesaid directions accordingly.

[M.R.Shah, J.]

=kailash=